represents averaged performance monitoring data collected over a period of time, wherein the performance monitoring data is converted into capacity planning data before the data structure is transmitted to a central collection location for capacity planning purposes.

Remarks

Reconsideration of the present application is respectfully requested. Claims 8-10 and 15 have been amended. Claims 11, 14 and 16 have been canceled without prejudice. Claim 19 has been added. Claims 1-10, 12-13, 15 and 17-19 remain in the application for consideration.

Claims 1-18 are rejected under 35 USC 103(a) as unpatentable over U.S. Patent No. 6,339,750 to Hoyer et al. ("Hoyer") in view of U.S. Patent No. 5,951,644 to Creemer ("Creemer"). For the reasons stated below, Applicants respectfully traverse this rejection.

Hoyer discloses a method for monitoring the real-time performance of a web site. Hoyer notes that existing performance monitors provide little or no assistance to the administrator in determining when the performance of the web site has strayed beyond specified boundaries or thresholds. Accordingly, Hoyer seeks to address an unmet need in the art for a performance monitor that can graphically set and display performance thresholds and thus alert the administrator. The Hoyer method includes collecting performance monitoring data (by a server-side component), transmitting the performance monitoring data from the server-side component to a client-side component, and storing the performance monitoring data in a data cache for display to the

administrator. The incoming performance monitoring data is also used to update the minimum, maximum and running averages of each performance variable.

Creemer discloses a system for predicting and managing network performance by managing and monitoring resource utilization for improved communications over networks. The usage monitoring system produces utilization data and then stores the utilization data in a histogram, and the statistically averaged data in the histogram can provide a prediction (based on past performance) as to future utilization of resources. The system of Creemer advantageously makes more efficient use of network resources and reduces network congestion.

Independent claim 1 recites a method of collecting capacity planning data at a central collection location. The claimed method includes: collecting client management data; storing the client management data in a cache for a selected time interval; averaging the client management data over the selected time interval; and transmitting the averaged data to the central collection location.

Clearly claim 1 differs from Hoyer in that the data is cached and average prior to being transmitted to the central collection location. By contrast, Hoyer transmits the raw data to a central location before it is cached and/or averaged. Moreover, Hoyer teaches away from the method of claim 1 because the problem Hoyer addresses, providing real-time alerts to web site administrator, would not be solved if Hoyer were modified to achieve the claimed invention. Claim 1 is therefore patentable over Hoyer for at least this reason.

Claim 1 is also patentable over the combination of Hoyer and Creemer. Creemer is non-analogous art and thus not combinable with Hoyer. "In order to rely on a

reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). Creemer relates to monitoring a network rather than monitoring a machine, so Creemer is not in the field of Applicants' endeavor. Moreover, Applicants were concerned with improving the accuracy of capacity planning data for one or more client machines, not with predicting and managing network performance. Even if Creemer were analogous art, there is no suggestion from the prior art to combine its teaching with those of Hoyer. In any event, combining the teachings and Hoyer and Creemer would not achieve the method of clam 1. For at least the reasons stated above, Applicants respectfully submit that independent claim 1 patentably distinguishes over Hoyer and Creemer, taken either individually or in combination.

Similarly, amended independent claims 10 and 15 and new independent claim 19 are patentable over Hoyer and Creemer. Claim 10 is directed to one or more computer-readable media having computer-executable components including a transmission component for transmitting the averaged client management data to a central collection location. Likewise, amended claim 15 is directed to one or more computer-readable media having computer-executable modules including means for transmitting the averaged client management data to a central location. New claim 19 requires a data structure having a data field containing capacity planning data which represents averaged performance monitoring data collected over a period of time, wherein the performance monitoring data is converted into capacity planning data before the data structure is transmitted to a central collection location for capacity planning

purposes. As with claim 1, and unlike Hoyer, each of these claims contains a limitation (e.g., a transmission component, means for transmitting, a data field) which requires that the data is averaged prior to being transmitted to the central collection location. Independent claims 10, 15 and 19 are thus patentable over Hoyer for at the reasons set forth above. As set forth above in discussing claim 1, Creemer is not properly combinable with Hoyer, and combining the teachings of Hoyer and Creemer would not, in any event, yield the invention of claims 10, 15 or 19. Applicants respectfully submit that independent claims 10, 15 and 19 patentably distinguish over Hoyer and Creemer, taken either individually or in combination.

Claims 2-9, 12-13 and 17-18 depend either directly or indirectly from independent claims 1, 10 and 15. Therefore, dependent claims 2-9, 12-13 and 17-18 are patentable over the Hoyer and Creemer for at the reasons stated above with respect to claims 1, 10 and 15. Accordingly, Applicants respectfully submit that dependent claims 2-9, 12-13 and 17-18 patentably distinguish over Hoyer and Creemer, taken either individually or in combination.

Conclusion

For the reasons stated above, claims 1-10, 12-13, 15 and 17-19 are now in condition for allowance. Applicants respectfully request withdrawal of the pending rejections and allowance of claims 1-10, 12-13, 15 and 17-19. If any issues remain which would prevent issuance of this application, the Examiner is urged to contact the undersigned prior to issuing a subsequent action. The Commissioner is hereby authorized to charge any additional amount required, or credit any overpayment, to Deposit Account No. 19-2112.

Respectfully submitted,

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Version With Markings to Show Changes Made

8. (Amended) One or more [A] computer-readable [medium] media having computer-executable instructions for performing the [steps] method recited in claim 1.

9. (Amended) A computer system having a processor, a memory, and an operating environment, the computer system operable to execute the [steps] method recited in claim 1.

10. (Amended) One or more [A] computer-readable [medium] media having computer-executable components comprising:

a client collection component for collecting client management data;

a client caching component for storing the client management data for a selected time interval; [and]

an averaging component for averaging the client management data over the selected time interval; and

a transmission component for transmitting the averaged client management data to a central collection location.

15. (Amended) One or more [A] computer-readable [medium] media having computer-executable modules comprising:

means for collecting client management data;

means for storing the client management data for a selected time interval; [and]

means for averaging the client management data over the selected time interval; and

means for transmitting the averaged client management data to a central location.